IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1665 OF 2007

IN

SUIT NO. 1266 OF 2007

Tilaknagar Industries Ltd... Plaintiff.

Versus

Somarasa Distilleries & Anr..... Defendants.

Mr. V. Dhond with Mr. B. Saraf and Mr. A.H.Kane
i/by Mr.Himanshu Kane for the Plaintiff.
Mr. D. B. Sawant for the Defendants.

CORAM : S.J.VAZIFDAR, J.

DATED : 4TH DECEMBER, 2007.

P.C.:

This is an action for infringement and passing off. The plaintiff has adopted and started using in respect of its goods, alcoholic beverages, a label mark containing the word mark "Senate". The defendant has started using the mark "Sonate" in respect of identical products. The plaintiff's label mark and word mark are registered.

2. The label on the plaintiff's bottle comprises of a yellow portion and a maroon portion. The yellow portion occupies about 80% of the label and the maroon portion occupies about 20% of the label. The label is

not rectangular. The top of the label, which comprises the maroon portion, ends with an arch. There is a yellow gold border running around the edge of the entire label. The defendants have adopted the identical label. The text on their respective labels is different. There is a picture of a person in both the labels in an oval frame bisecting the two portions in the center. The pictures are of different persons. On the top of the yellow portion of both the labels are the respective marks written in a similar style.

3. There is no dispute regarding the plaintiff's reputation and goodwill. Nor is there any dispute about the fact that the plaintiff's word mark and label mark are registered in India. Undoubtedly, there is a deceptive similarity visually and phonetically in the marks. I am unable to accept the defendants' contention that there is no similarity between the word or the label.

4. The other defence is that the label adopted by defendant no.1 has been approved by the Karnataka Excise Authority. The same, however, does not defeat the plaintiff's right to maintain an action for infringement or passing off. There is nothing to show that the permission granted by the Excise Authority has any bearing on the question of the rights of the

parties under the Trade Marks Act, 1999. Nor has my attention been invited to any provision of law whereby the rights of a party under the said Act are affected by such permission.

5. The last defence is that the defendants manufacture the said goods and have adopted the said mark only in respect of goods which are exported. Section 56 of the Trade Marks Act, 1999 is a complete answer to that contention.

6. In the circumstances, the notice of motion is made absolute in terms of prayers (a), (b) and (c).

7. It is clarified that prayer (a) was also granted by an ad-interim order dated 3rd May, 2007 and pursuant thereto the Court Receiver has executed the order. The Court receiver shall, however, not at this stage destroy the goods but shall retain the same.

8. The defendants, however, shall be at liberty to make an application before the concerned authority for removal and re-packing of the contents of the bottles. The defendants are also at liberty to take delivery of the bottles provided the labels thereon are removed by or under the directions of the Court Receiver.

Sd/-

-x-x-x-x-x-x-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 2686 OF 2007

IN

NOTICE OF MOTION NO. 1665 OF 2007

IN

SUIT NO. 1266 OF 2007

Tilaknagar Industries Ltd... Plaintiff.

Versus

Somarasa Distilleries & Anr..... Defendants.

Mr. V. Dhond with Mr. B. Saraf and Mr. A.H.Kane i/by Mr.Himanshu Kane for the Plaintiff.
Mr. D. B. Sawant for the Defendants.

CORAM : S.J.VAZIFDAR, J.

DATED : 4TH DECEMBER, 2007.

P.C.:

The main notice of motion has been allowed. In the circumstances, this chamber summons is dismissed for the reasons stated therein.

Sd/-

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